

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1257

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UNITED STATES OF COURT APPEALS
SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA

Appellee

Docket No. 75-1257

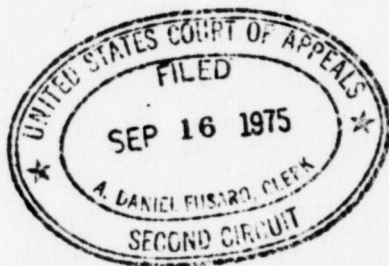
-against-

JORGE DABED SUMAR

Appellant

-----X

APPENDIX



JOHN C. CORBETT
Attorney for Appellant
Office & P.O. Address
66 Court Street
Brooklyn, New York 11201

PAGINATION AS IN ORIGINAL COPY

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DOCKET

JUDGE GAGLIARDI

6-1-1111-268

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

Bancroft Littlefield, AUSA.

791-0069

JORGE DABED-SUMAR

Filed: 7/2/75

For Defendant:

John C. Corbett

55 Court St. Allyn, N.Y. 112

tele: 875-1975.

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

Clerk,

Marshal, ✓

Attorney,

Commissioner's Court,

UNSUB 21:846 Consp. to viol. Fed. Narcotic Laws. (Ct.)

21:173,4 Import. of cocaine (Ct.2)

1:812,952,960(a)(1),(b). Import of cocaine into the U.S. (Cts.3&5)

1:812,841(a)(1),(b). Distr. & possess. w/intent to distr.

cocaine, IL. (Ct.4)

(Five Counts)

DATE

PROCEEDINGS

-17-74 Filed indictment. (Related to 73Cr1098 & 74Cr465 and assigned to Gagliardi, J.)

10/10/74 Court's bill of particulars filed.

11-22-74 Motion of Charles W. Corbett, Jr. in opposition to motion of
D. Grant.1/1/74 Filed Order that the prison authorities at the Westchester County
Jail, Yonkers, N.Y. release Selin Valenzuela to the custody
of Special Agent Hanieski of the Drug Enforcement Adm.
etc. Mancin, J. (10/18/74 order delivered to Warden, West.
Co. Jail by Deputy V.J. Hickey on this date.

-over-

PROCEEDINGS

2

	JAMIE MENDOZA	
2	JORGE SARAVIA	
3	JOSE KENNETH, PENARANDA	
4	JORGE BARO	
5	SERGIO MACHIN	
6	ALBERTO LOPEZ- a/k/a El Viejo / 7-16-74	7-16-74
7	ENRIQUE BARRERA- a/k/a Manolo	
8	MANUEL ABDO CHAGON- a/k/a Manuel Garcia a/k/a Manolito	
9	GILBERT BORENSZTEJN- a/k/a El Gordo	
10	MILTON GRIJALVA	
11	RAFAEL LIRA 11-26-74	
12	JOSE ALHAMBRA- a/k/a Pepe	
13	JOHN DOE- a/k/a Rolando	
14	JOHN DOE- a/k/a Christian, a/k/a El Flaco.	
15	JOHN DOE- a/k/a El Chino	
16	JOHN DOE- a/k/a Gonzalez	
17	JOHN DOE- a/k/a Roberto	

Sep-10-73	ALL DEFENDANTS- Court directs entry of not guilty plea - referred to Judge Stewart.--- Duffy, J.	
Oct-5-73	MENDOZA- Filed the following papers received from S.D. of Florida: Order of removal and Magistrates papers including appearance bond in the sum of \$50,000. FRB	
Oct-12-73	Filed Governments notice of readiness for trial.	
t.29-73	MENDOZA--Filed warrant for arrest of said deft. and marshal's return. Executed on Aug.10,1973.	
ov.19-73	MENDOZA { BARO { SARAVIA }--Filed govts. notice of readiness for trial.	
ov.19-73	BARRERA { BORNSTEJN }--Filed govts. notice of readiness for trial.	
v.21-73	BARRERA--Filed govt's. W/H/C to produce said deft. on Nov.21,1973 at 10:30am for a pre trial conference(unexecuted).(unsigned by Clerk)	
v.21-73	Filed affdt. of Jeffrey Harris(govt.) re: above writ for deft. Barrera.	

B

PROCEEDINGS		Date Order Judgment No.
75	Filed OPINION # 42078- deft. J. Sumar's motion for declaration of a mistrial and the granting of a new trial...granted. Gagliardi, J. mm	
75	Filed plttf's notice of motion granting deft's motion after conviction for a new trial ret. 4-7-75 at 9:30 A.M.	
1-75	Filed plttf's memorandum in support of motion for a new trial.	
1-75	Filed affidavit of P.J. Curran in support of plttf's motion for a new trial.	
1-75	Filed affidavit of R. Littlefield, Jr. Re: Gov't's motion for a new trial.	
4-75	Filed affidavit of J.C. Corbett (for deft. in opposition to plttf's motion for re-argument.)	
15-75	Filed OPINION # 42251...Accordingly, the court adheres to its decision of 3-21-75. Gagliardi, J. mm	
12-75	Filed transcript of record of proceedings, dated 11-18-74.	
28-75	Filed deft. J. Sumar's notice of motion re: suppression, etc. ret. 5-5-75.	
02-75	Filed affdvt. for writ of habeas corpus ad testificandum for Rafael Alarcon ret. 5-5-75.	
10-75	Filed affdvt. of Bancroft Littlefield for writ of habeas corpus ad pros. for Jorge Dabad-Sumar. ret. 5-5-75.	
02-75	Filed ORDER that the prison authorities at Westchester County Jail, release A. Sobochi to the custody of Special Agent Shea for the purpose of transporting said deft. to U.S. Courthouse SDNY and return to prison on 5-3-75, that the defts. J. Canonico and S. Valenzuela be released to custody of said Agent for the purpose of transporting said defts. to the U.S. Courthouse SDNY and return to prison on 5-4-75. Pierce, J.	
08-75	Second jury trial begun before Judge Gagliardi.	
09-75	Trial cont'd.	
10-75	Trial cont'd.	
12-75	Trial cont'd.	
13-75	Trial cont'd.	
14-75	Trial cont'd. & concluded. Jury verdict on count 1 -guilty on count 5 guilty. Pre-sentence investigation ordered, for sentence 6-26-75 at 9:30. Deft. cont'd. on present bail until date of sentence. Gagliardi, J.	
27-75	Filed writ of habeas corpus ad testificandum for Francisco Quinart writ satisfied 5-1-75.	
	Filed transcript of record of proceedings, dated 12/14/74	
26-75	Filed JUDGMENT (atty. present) deft. is committed to the custody of the atty. gen'l. for imprisonment for a period of FOUR and ONE-HALF (4 1/2) YEARS on each of counts 1 and 2 concurrently. Pursuant to the provisions of Sec. 841 of T.21, U.S. Code, deft. is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement. Gagliardi, J. issued all copies.	

-75 Filed deft. J. Dabed Sumar's notice of appeal from judgment of 6-29-75.
mailed copies to U.S. Attorney and deft. 7-3-75.

G. E. Thompson
RAYMOND F. LUNGBERG, Clerk

By _____
Deputy Clerk

FILED

6
EL, Jr:cc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 : INDICTMENT
 -v- :
 : S 74 Cr. 977
JORGE DABED-SUMAR, :
 :
 Defendant. :
-----X

The Grand Jury charges:

1. From on or about the 1st day of December, 1968, and continuously thereafter up to and including the filing of this indictment in the Southern District of New York, JORGE DABED-SUMAR, the defendant, and Francisco Guinart, Eduardo Fritiz-Colon, Armando Cordona, Tito Ramos, Boris Rodriguez, Carlos Struch, John Doe, a/k/a El Mamaco, Amado Dabed-Sumar, Juan Carlos Mur, Gringo Smith, Carlos Rojas, a/k/a "El Tripulina," John Doe "Ivan," Miguel Guerra, Chato Borques, Alberto Sotomayor, Wilson MacLean, Andres Pachet, Juan Carlos Canonico, Euelio Quinteros, Rodolfo Ortiz, Adolfo Sobocki-Tobias, Hyman T. Grant, Vincent Rizzo, William Benjamin, Louis Otero and Selim Valenzuela named herein as co-conspirators, and others to the Grand Jury known and unknown, unlawfully, wilfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173, 174, 812, 841(a)(1), 841(b)(1)(A), 842(b), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant and co-conspirators unlawfully, wilfully, intentionally and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary

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to law, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that the said defendant and co-conspirators unlawfully, wilfully, intentionally and knowingly would fraudulently import and bring narcotic drugs into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was further a part of said conspiracy that the said defendant and co-conspirators unlawfully, wilfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

5. It was further a part of said conspiracy that the said defendant and co-conspirators would unlawfully, wilfully, intentionally and knowingly import into the customs territory of the United States from a place outside thereof and import into the United States from a place outside thereof Schedule I and II narcotic drug controlled substances in violation of Sections 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about November, 1963, defendant JORGE DABED-SUMAR sold approximately one kilogram of cocaine in Arica, Chile.

2. In or about December, 1968, defendant JORGE DABED-SUMAR sold two kilograms of cocaine in Arica, Chile.

3. In or about December, 1968, defendant JORGE DABED-SUMAR sold two kilograms of cocaine to co-conspirator Adolfo Sobocki-Tobias in Tacna, Peru.

4. In or about November, 1970, defendant JORGE DABED-SUMAR sold approximately two kilograms of cocaine to co-conspirator Adolfo Sobocki-Tobias.

5. In or about November, 1970, co-conspirator Boris Rodriguez and Carlos Struch received delivery of approximately 150 kilograms of cocaine which they smuggled into the United States in a Chevrolet Apache Truck.

6. In or about August, 1971, co-conspirator Boris Rodriguez delivered approximately \$100,000 to co-conspirator Adolfo Sobocki-Tobias in the garage of the Hotel Taft, Seventh Avenue and 50th Street, New York, New York, as partial payment for 150 kilograms of cocaine.

7. In or about July, 1971, defendant JORGE DABED-SUMAR sold approximately eight kilograms of cocaine to co-conspirator Juan Carlos Canonico which cocaine was subsequently smuggled into the United States at San Antonio, Texas.

8. In or about April, 1972, fifteen kilograms of cocaine were transported in two suitcases by co-conspirators Andre Puchet and Juan Carlos Mur from San Antonio, Texas to New York, New York and stashed in an apartment at 300 East 81st Street.

9. In or about November, 1971, defendant JORGE DABED-SUMAR sold approximately four kilograms of cocaine to co-conspirator Selin Valenzuela in Santiago, Chile.

10. In or about November, 1971, co-conspirator Selin Valenzuela sold approximately four kilograms of cocaine to co-conspirator John Doe "Ivan," who transported the four kilograms of cocaine to New York.

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11. In or about May, 1972, co-conspirator Juan Carlos Canonico transported eight kilograms of cocaine from Miami, Florida to New York, New York.

12. In or about August, 1972 defendant JORGE DABED-SUMAR sold two kilograms of cocaine.

13. In or about September, 1972, defendant JORGE DABED-SUMAR sold approximately twenty kilograms of cocaine in Santiago, Chile, which cocaine was smuggled into the United States.

14. In or about May, 1973, defendant JORGE DABED-SUMAR obtained approximately 30 kilos of cocaine sulphate from co-conspirator El Chato Berques and approximately 20 kilos of cocaine base from co-conspirator Miguel Guerra, which DABED-SUMAR sold to conspirators Selin Valenzuela and Wilson MacLean.

(Title 21, United States Code, Sections 173, 174, 846 and 963)

COUNT TWO

The Grand Jury further charges:

In or about April, 1972, in the Southern District of New York, JORGE DABED-SUMAR, the defendant, unlawfully wilfully and knowingly did import into the United States from places outside of the United States, a Schedule II narcotic drug controlled substance to wit, approximately eight kilograms of cocaine.

(Title 21, United States Code, Section 952(a) 960(a)(1) and 960(b)(1); Title 18, United States Code, Section 2.)

Foreman

PAUL J. CONNAN
United States Attorney

1 rgal

2 THE CLERK: The court is about to charge
3 the jury. Anyone that wishes to leave may do so now.
4 Once the charge has started no one will be permitted
5 to leave or enter the courtroom.

6 Marshal, will you please lock the door.

7 CHARGE-OF-THE COURT

8 (Gagliardi, J.)

9 THE COURT: The purpose of that announce-
10 ment by the clerk was so that you would not be distracted
11 by anybody walking in or out during the course of my
12 charge that might distract you from your paying atten-
13 tion here. I know that we are in a first-floor
14 courtroom, and some people just, being busybodies, walk
15 in, and that door is over there and during the course
16 of the trial I noticed that it has distracted you.
17 But hopefully we will have nothing to distract you from
18 listening to what I have to say to you.

19 You are about to enter upon your final duty,
20 which is to decide the fact issues in this case. I
21 told you at the very start of the trial that your
22 principal function during the course of the trial was
23 to observe and listen to each witness as he testified,
24 and it has been evident to me that you have faithfully
25 discharged this duty.

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You are to perform your final duty in an attitude of complete fairness and impartiality. You are to appraise the evidence calmly and deliberately and, as was emphasized by me at the time of your selection as jurors, without bias or prejudice with respect to the government or the defendant as parties to this controversy.

The case is important to the government for the enforcement of criminal laws as a matter of prime concern to the community. Equally, it is important to the defendant who is charged with a serious crime.

The fact that this prosecution is brought in the name of the United States of America entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties stand as equals before the bar of justice.

As I said, your final role is to pass upon and decide the fact issues in the case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the testimony and you draw whatever reasonable inferences

1 there are to be drawn from the facts as you determine
2 them to be.
3

4 My function at this point is to instruct
5 you on the law. It is your duty to accept these in-
6 structions of law and to apply them to the facts as you
7 determine the facts to be. The logical result of
8 that application will be your verdict in this case.

9 Now, with respect to any fact matter and
10 with respect to the testimony of any witness, it is your
11 recollection and yours alone that governs. Anything
12 that counsel, either for the government or for the de-
13 fendant, may have said with respect to matters in
14 evidence -- that is, as to any factual matter -- whether
15 stated in a question, in argument or in summations, is
16 not to be substituted for your own independent recollec-
17 tion, and so, too, anything that the court may have said
18 during the progress of the trial, or that I may say during
19 the course of these instructions with respect to a fact
20 matter is not to be taken in substitution for your own
21 independent recollection, which governs at all times.

22 Before I inform you as to the precise
23 charges here, I believe a number of preliminary observa-
24 tions are in order.

25 In determining the facts you should not be

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influenced by rulings that the court may have made during the course of the trial. These rulings dealt solely with matters of law and not questions of fact. The court's rulings made on objections by the attorneys are not to be considered by you. Counsel not only had the right, but, indeed, the duty to press whatever objections they believed existed as to the admission of offered evidence.

Now, during the course of the trial there were occasions when I may have admonished either the attorney for the government or the defense lawyer. Sometimes in the ardor of advocacy counsel say or do things which in calmer moments they would not have said or done. These incidents must play no part in your deliberations. The personalities of the lawyers or the judge have nothing to do with this case. You are to expressly understand that the court has no opinion as to the guilt or innocence of the defendant. That is for you to decide. The fact issues must be decided by you solely and only within the framework of the evidence and the principles of law that apply.

I recognize that a judge may have a profound influence upon the jury. I have done everything within my power to hide from you any feelings that I

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2 may have as to how you should decide this case. If
3 you feel that you have gleaned some opinion as to how
4 I think you should decide this case either from the
5 expression on my face or any tone of voice or anything
6 else, please disregard it. You and you alone, as
7 I have said, are the judges of the facts.

8 Now, you are to consider only the evidence
9 in this case, which consists of the sworn testimony of
10 the witnesses, the exhibits which have been received
11 in evidence and the presumptions which I will tell you
12 about in these instructions, such as the presumption
13 of innocence.

14 While you are to consider only the evidence
15 in the case, you are not limited to the bald state-
16 ments of the witnesses. On the contrary, you are per-
17 mitted to draw from the facts which you find have
18 been proved here such reasonable inferences as seem justi-
19 fied to you in the light of your own experience. And
20 "inferences" is merely another word for a conclusion
21 which reason or common sense leads you to draw from the
22 facts that have been proved here.

23 In considering the evidence you must remember,
24 as I told you at the outset of this trial, that the
25 indictment is only a formal method of accusing a defend-

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2 ant of the crimes charged. It is not evidence against
3 the defendant, Nor is any weight to be given to the
4 fact that an indictment has been returned against the de-
5 fendant. I informed you that the defendant has pled
6 not guilty and thereby put in issue accusations of the
7 indictment.

8 Generally speaking, there are two types of
9 evidence from which a jury may properly find the truth
10 as to the facts of the case. One is direct evidence.
11 That is the testimony of an eyewitness, somebody who
12 saw or actually heard something done or said. The
13 other is indirect or circumstantial evidence, the proof
14 of a chain of circumstances pointing to the existence
15 of certain facts. Generally, the law makes no dis-
16 tinction between direct and circumstantial evidence but
17 only requires that the jury find the facts in accord-
18 ance with all the evidence in the case, both direct and
19 circumstantial.

20 We have a common example that we use in this
21 courthouse to describe the difference between direct
22 and circumstantial evidence, and in view of the two
23 courtrooms that we have used perhaps it is a little bit
24 appropriate to give it to you here.

25 I want you to assume, as was the case when

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2 you came into court today, that it was the nice, bright,
3 sunshiny day that it was. You can tell by your
4 powers of observation, direct evidence, that it was a
5 clear, sunny day and it was not raining. That would
6 be direct evidence, your own observation.

7 With respect to circumstantial evidence,
8 I want you to assume that we were in that courtroom that
9 we were in up on the fifth floor the other day and that
10 we are actually down here on the first floor, right by
11 the entrance to the courthouse. It doesn't have any
12 windows in it and you can't see outside. Assume we
13 were in that courtroom, and as you came in today,
14 as I said, it was nice and sunny outside, and assume
15 that after we were here about an hour or so on this first
16 floor right near the door to the outside, that somebody
17 walked in and their clothes were a little bit damp and
18 there was a little water dripping from their head, and
19 assume about five minutes or so later somebody else
20 comes in and he has got a raincoat and that's dripping
21 water and he has got an umbrella in his hand and that
22 is also dripping water. Even though you could not
23 look outside and see, from those circumstances you could
24 probably conclude that it was raining outside. That's
25 circumstantial evidence, proof of a chain of circumstances

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2 that leads to the existence or nonexistence of a fact.

3 As I have indicated before the law makes no distinction between
4 direct and circumstantial evidence, it only requires
5 that you find the facts in accordance with all the
6 evidence in the case, both direct and circumstantial.

7 Now, you have heard me mention to you pre-
8 sumption of innocence. The law presumes a defendant
9 to be innocent of crime and thus a defendant, although
10 accused, begins the trial with no evidence against him
11 and the law permits nothing but legal evidence pre-
12 sented before you here in court to be considered in
13 support of any charge against the defendant. The
14 presumption of innocence alone is sufficient to acquit
15 a defendant unless you are satisfied beyond a reasonable
16 doubt of the defendant's guilt after careful and impartial
17 consideration of all the evidence in the case. The
18 burden is always upon the government to prove guilt
19 beyond a reasonable doubt and this burden never shifts
20 to a defendant, for the law never imposes upon a defendant
21 in a criminal case the burden or duty of calling any
22 witnesses or producing any evidence.

23 I know that one or more of you has some
24 familiarity with the Spanish language. I told you
25 at the beginning of this case when we were selecting

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2 you as jurors that you must accept the version of trans-
3 lations as given to you by the interpreter. I am
4 reminding you of that again and that only testimony
5 that was allowed in is to be considered by you.

6 You may recall that one of the witnesses
7 was talking in Spanish and one of the jurors said, "I
8 could not hear that," and I indicated that you should
9 not because it was not properly before you. Now,
10 any statements that were made and are not in evidence
11 here should not be considered by you in any way.

12 This trial has been relatively short.
13 Counsel have adequately summarized to you and reviewed
14 the evidence, so I am not going to do that with you,
15 but I have prepared here and will bring to your
16 attention the witnesses in the chronology in which
17 they appeared here.

18 The first witness was Adolfo Sobococki-Tobias.
19 He was followed on the stand by Juan Carlos Canonico-
20 Carrasco. The next witness was Raul Crotti. He
21 was followed by Selim Valenzuela. The next one was
22 Raphael Alarcon, and finally the government's last witness
23 on its direct case was Emilio Livares.

24 With that the government rested and the de-
25 fendant called as witnesses Francisco Guinart, Sergio

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2 Lazo, Juan Velasquez and Abraham Rivera. The defendant
3 then rested.

4 Then the government recalled Canonico and
5 called Patrick Shea. The government rested and Guinart
6 was recalled.

7 The defendant rested and then John P. Raftery
8 appeared before you here this morning, after which both
9 sides finally rested.

10 Now, the indictment in this case contains
11 two counts. A separate crime or offense is charged
12 in each count of the indictment. Each offense and
13 the evidence pertaining to it should be considered
14 separately. The fact that you may find the defendant
15 guilty or not guilty of one of the offenses charged
16 should not control your verdict as to the other offense
17 charged.

18 I want to point out to you that the fact that
19 the persons charged as coconspirators in this case
20 have pled guilty to part of the indictment as such
21 has no bearing on the guilt or innocence of the defendant
22 now on trial. I will inform you later with respect to
23 credibility of the effect of a conviction in that
24 respect.

25 The accusations in this case are made under

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2 certain federal laws. It is not necessary for you
3 to memorize or know the exact words of these laws,
4 but I think a little background will be easier for you
5 in your understanding of the laws that are involved in
6 this case.

7 There is a minor complication that has to
8 do with the time because of a change in the law between
9 the date of the conspiracy charge and thereafter.
10 The period covered by the indictment extends from 1968
11 to 1974. We are concerned basically with two federal
12 laws, one that was in force up until May 1st of 1971
13 and then a subsequent law which replaced the earlier
14 law and became effective on May 1, 1971 and thereafter.

15 The relevant federal narcotics laws in effect
16 in December, 1968 up to May 1st of 1971 were Sections 173
17 and 174 of Title 21, United States Code.

18 Section 174 provides in part as follows:

19 "Whoever fraudulently or knowingly imports
20 or brings any narcotic drug into the United States con-
21 trary to law, or brings any narcotic drug into the
22 United States contrary to law, or receives, conceals,
23 buys, sells or in any manner facilitates the transporta-
24 tion, concealment or sale of any such narcotic drug
25 after being imported or brought in, knowing the same

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to have been imported or brought into the United States contrary to law, or conspires to commit any of such facts in violation of the laws of the United States," shall be guilty of a crime.

Section 173 provides in part as follows:

"It is unlawful to import or bring any narcotic drug into the United States except such amounts as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses."

The conspiracy charge relates to alleged violations of this statute. The new provisions, subsequent to May of 1971, were enacted and are contained in certain sections of Title 21 of the United States Code, namely, Sections 812, 841(a)(91), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1).

The conspiracy alleged in the indictment, which I will read to you shortly, charges a conspiracy from on or about 1st day of December, 1968 up until October 17th of 1974, which is the date of the filing of the indictment.

Now, these provisions forbid the importation into the United States and the distribution and possession with intent to distribute certain kinds of narcotic drugs, amongst which is cocaine. These

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sections make it unlawful -- that is, these latter sections after May 1st of 1971 make it unlawful -- for any person knowingly or intentionally to import into the United States or to distribute or possess with intent to distribute any controlled substance such as cocaine. Under the law, both before May of 1971 and since May of 1971, it is a crime to conspire to violate either of these provisions.

I will now read to you the indictment:

"The Grand Jury charges:

"1. From on or about the 1st day of December, 1968 and continuously thereafter up to and including the date of the filing of this indictment," which I have said is, and I hope my memory is correct, October 17th of 1974, "in the Southern District of New York, Jorge Dabed-Sumar, the defendant, and Francisco Guinart, Eduardo Guinart, Armando Cardona, Tito Ramos, Boris Rodriguez, Carlos Struch, John Doe, also known as El Muneco, Amado Dabed-Sumar, Juan Carlos Mur, Gringo Smith, Carlos Rojas, also known as El Tripulina, John Doe 'Ivan' Miguel Guerra, Chato Borques, Alberto Soto mayer, Wilson, MacLean, Andres Puchet, Juan Carlos Canonico, Imilio Quinteros, Rodolfo Ortiz, Adolfo Sobocki-Tobias, Hyman T. Grant, Vincent Rizzo, William Benjamin, Louis Lovisotero

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2 and Selim Valenzuela, named herein as co-conspirators,
3 and others to the Grand Jury known and unknown, unlawfully,
4 wilfully, intentionally and knowingly combined,
5 conspired, confederated and agreed together and with
6 each other to violate Sections 173, 1974, 812, 841(a)(1),
7 841(b)(1)(A), 842(b), 952(a), 960(a)(1) and 960(b)(1)
8 of Title 21, United States Code.

9 "2. It was part of said conspiracy that
10 the said defendant and co-conspirators unlawfully,
11 wilfully, intentionally and knowingly would receive,
12 conceal, buy, sell and facilitate the transportation,
13 concealment and sale of a quantity of narcotic drugs,
14 the exact amount and nature thereof being to the
15 Grand Jury unknown, after the said narcotic drugs had
16 been imported into the United States contrary to law,
17 knowing that the said narcotic drugs had been imported
18 and brought into the United States contrary to
19 law, in violation of Sections 173 and 174 of Title 21,
20 United States Code.

21 "3. It was further a part of said con-
22 spiracy that the said defendant and co-conspirators un-
23 lawfully, wilfully, intentionally and knowingly would
24 fraudulently import and bring narcotic drugs into the
25 United States contrary to law in violation of Sections

rgal5

173 and 174 of Title 21, United States Code.

"4. It was further a part of said conspiracy that the said defendant and co-conspirators unlawfully, wilfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"5. It was further a part of said conspiracy that the said defendant and co-conspirators would unlawfully, wilfully, intentionally and knowingly import into the customs territory of the United States from a place outside thereof Schedule I and II narcotic drug controlled substances in violation of Sections 9529(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code."

That is the first part of the conspiracy charge. There is a second part called the overt acts which I will read to you later, but they were all part of the first charge.

Now, for our purposes the Southern District as mentioned in the first part of this indictment includes Manhattan County.

1 rgal6
2 Before you may find the defendant guilty
3 of conspiracy as charged in the first count of the
4 indictment you must find the following three elements
5 beyond a reasonable doubt. I will define for you
6 later on what beyond a reasonable doubt means, but
7 these three elements must be found beyond a reasonable
8 doubt.

9 First, that some time approximately between
10 December 1, 1968 and October 17, 1974, the dates specified
11 in the indictment, an agreement or understanding existed
12 between any two or more named conspirators to commit
13 at least one of the crimes charged in the indictment,
14 namely, the illegal importation of a federally con-
15 trolled substance, cocaine, into the United States, or
16 the subsequent illegal possession or distribution of
17 said narcotics drugs in New York City. In short,
18 the government must prove that a conspiracy existed with
19 respect to either the importation or the possession and/or
20 distribution of narcotics. That is the first element.

21 The second of these elements is that the
22 defendant Jorge Dabad-Sumar knowingly and wilfully
23 became a participant in the conspiracy with knowledge of
24 at least one of its criminal purposes.

25 And the third element is that one of the

1 rgal7

2 conspirators, not necessarily the defendant on trial,
3 knowingly committed at least one overt act set forth
4 in the indictment at or about the time alleged in
5 furtherance of the conspiracy, and then at least one
6 of them was committed in the Southern District of
7 New York. I am sure that further explanation will
8 of help to you.

9 First, as to the existence of a conspiracy,
10 simply to find a conspiracy, a conspiracy is a com-
11 bination of two or more persons who by concerted action
12 have tried to accomplish some unlawful purpose. A
13 conspiracy is an unlawful combination or agreement to
14 violate the law. Whether or not the persons charged
15 in the indictment accomplished what it is alleged they
16 conspired to do is immaterial to the question of guilt
17 or innocence. Thus, the success or lack of success
18 of the conspiracy doesn't matter, for a conspiracy is
19 a crime entirely separate and apart from the substan-
20 tive crime that may be the goal of the conspiracy.

21 A conspiracy has sometimes been called a
22 partnership in criminal purposes in which each member
23 becomes the agent of every other member. To establish
24 the existence of a conspiracy, however, the government
25 is not required to show that two or more persons sat

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2 around a table and entered into a solemn compact,
3 orally or in writing, stating that they have formed a
4 conspiracy to violate the law, setting forth the details
5 of the plan, the means by which it is to be carried
6 out or the part to be played by each conspirator.

7 Your common sense will tell you that when
8 men undertake to enter into a conspiracy much is
9 left to unexpressed understanding. Conspirators do
10 not usually reduce their agreements to writing or
11 acknowledge them before a notary public, nor do they
12 publicly broadcast their plans. A conspiracy is almost
13 always characterized by secrecy.

14 In determining the existence or nonexistence of
15 a conspiracy it is not required that you find that each
16 and every one of the alleged co-conspirators joined in
17 the conspiracy. It is sufficient if you find beyond
18 a reasonable doubt that two or more persons in any man-
19 ner, through any contrivance, impliedly or tacitly, came
20 to a common understanding to violate the law.

21 In determining whether there has been an
22 unlawful agreement, you may consider acts and conduct
23 which are done to carry out a criminal purpose. Usually
24 the only evidence available is that of disconnected
25 acts on the part of the alleged individual conspirators,

1 rgal9

2 which acts you may find, when taken together in connec-
3 tion with each other and with reasonable inferences flowing
4 therefrom, show a conspiracy or an agreement to secure
5 a particular result as satisfactorily and conclusively
6 as more direct proof.

7 If upon all the evidence, both direct and
8 circumstantial, you find beyond a reasonable doubt that
9 the minds of at least two of the alleged conspirators
10 met in an understanding way and that they have agreed,
11 as I have explained the conspiracy agreement to you,
12 to work in furtherance of the unlawful scheme alleged
13 in the indictment, and that thereafter at least one of
14 the conspirators did any overt act to effect the object of
15 the conspiracy, then proof of the existence of the conspiracy
16 is established. It is not necessary for the govern-
17 ment to prove the success of the conspiracy in order
18 to establish a violation of the conspiracy statute.

19 Now, some further comment may be of
20 help to you. As you recall, I defined a conspiracy
21 as a combination of two or more persons by concerted
22 action to accomplish some unlawful purpose. Thus,
23 before you may find that a conspiracy existed you must
24 also find that what the conspirators intended to do would
25 have violated one or more federal laws if they had succeeded

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2 in accomplishing what they set out to do.

3 The indictment here, as I have said, charges
4 that the conspiracy existed from on or about December 1,
5 1968 and continued to October 17, 1974. It is not
6 necessary for the government to prove that the conspiracy
7 started and ended on or about those specific dates. It
8 is sufficient if you find that in fact a conspiracy was
9 formed and existed for some substantial time within the
10 period set forth in the indictment and that at least
11 one of the overt acts was committed in furtherance thereof
12 within that period. A conspiracy once formed is pre-
13 sumed to have continued until its objectives are accomplished
14 or there is an affirmative act of termination by its
15 members.

16 So, too, once a person is found to be a mem-
17 ber of the conspiracy, he is presumed to have continued
18 his membership until its termination, unless there is
19 affirmative proof offered of his withdrawal.

20 Now, the second element. If you find
21 beyond a reasonable doubt that the conspiracy charge
22 existed, then you must determine whether Jorge Dabed-
23 Sumar was a member of that conspiracy. You should
24 consider whether on all of the evidence the defendant
25 knowingly and purposefully entered a conspiracy.

1 rga21

2 In determining whether the defendant became
3 a member of a conspiracy you must determine not only
4 whether he participated in it but whether he did so with
5 knowledge of its unlawful purpose; did he join with an
6 awareness of at least some of the basic aims and
7 purposes of the conspiracy. Knowledge is a matter
8 of inference from facts proved. A person need
9 not be fully informed as to the details or the scope
10 of the conspiracy in order to justify an inference of
11 knowledge on his part. To have guilty knowledge,
12 a defendant need not know the full extent of the conspiracy
13 or all of its activities and actions. Each conspirator
14 need not know the identity or number of his confederates.
15 Conspirators may not have previously associated to-
16 gether. The defendant may know only one other member
17 of the conspiracy, but if he enters into an unlawful
18 agreement with that other member he becomes a party there-
19 to.

20 I want to caution you, however, that
21 mere association, acquaintance or knowledge of one or
22 more of the conspirators does not make one a member of
23 a conspiracy, nor is knowledge without participation
24 sufficient. What is necessary is that the defendant
25 participate with knowledge of at least some of the

1 rga22

2 purposes of the conspiracy and with intent to aid in
3 the accomplishment of those unlawful ends.

4 In determining whether a conspiracy existed
5 you should consider the facts and declarations of all
6 the alleged conspirators. However, in determining
7 whether the defendant was a member of the conspiracy, you
8 may consider only his own acts and statements. He
9 cannot be bound by the acts or declarations of other
10 alleged participants until and unless you are satisfied
11 beyond a reasonable doubt that a conspiracy existed
12 and that the defendant was one of its members. In
13 other words, your determination as to the participation
14 in the conspiracy of the defendant must be based upon
15 what you find to have been his own actions, his own
16 conduct, his own statements or declarations, his
17 connection with the acts and conduct of other alleged
18 co-conspirators and the reasonable inferences to be
19 drawn therefrom.

20 Now, during the course of this trial certain
21 testimony was taken over objection subject to connection.
22 Now, testimony concerning acts or statements of one
23 alleged co-conspirator done or said in the absence of
24 other alleged co-conspirators, although received in evi-
25 dence without limitation against the alleged co-con-

1 extent of his participation has no bearing on the ques-
2 tion of guilt or innocence. Even if he participated
3 in it to a degree less limited than that of his co-
4 conspirators, he is equally culpable so long as you in
5 fact find beyond a reasonable doubt that he was a con-
6 spirator. If one joined a conspiracy after its forma-
7 tion and engaged in it to a more limited degree than
8 other co-conspirators, he is equally culpable so long
9 as you find beyond a reasonable doubt that he was in
10 fact a co-conspirator.
11

12 Thus, each member of a conspiracy may perform
13 separate and distinct acts at different times and at
14 different places. Some conspirators may play major
15 roles while others may play minor roles. It is not
16 required that a person be a member of a conspiracy from
17 its very start. He may join it at any point during
18 its progress and be held responsible for all that has
19 been done before he joined and all that may be done there-
20 after during its existence and while he remains a member.
21

22 Simply stated, and using the partnership
23 analogy, by becoming a partner he assumes all the
24 liabilities of the partnership, including those that
25 occurred before he became a member.

Each conspirator need not know the identity

1 or the number of all his confederates. The con-
2 spirators may not have previously associated together.
3 One of the members may know only one other member of
4 the conspiracy, but if he enters into an unlawful agree-
5 ment with that member of the conspiracy he becomes a
6 party thereto. Nor is it necessary that a member receive
7 any pecuniary benefit from his participation in the
8 conspiracy as long as he in fact participated in it in
9 the way I have instructed you, but the question
10 is did the defendant join others with the awareness
11 of at least some of the basic purposes and aims of the
12 conspiracy. If so, he adopts as his own the past
13 and future acts of all the other conspirators.
14

15 A further element, once a person is found
16 to be a member of the conspiracy he is presumed to
17 continue his membership therein until its termination.
18 The burden is upon a conspirator to satisfy you by a
19 firm proof that he withdrew and disassociated himself
20 from it.

21 Now, I told you that there are two parts
22 to the conspiracy count and I have already read and
23 instructed you on the first part. The second part
24 consists of what are called overt acts. To find that
25 a conspiracy existed not only must you find beyond a

reasonable doubt those things I have already told you about, but you must also find beyond a reasonable doubt that one or more of the overt acts alleged in the indictment was done, and beyond a reasonable doubt that at least one of them was done in the Southern District of New York.

The overt acts are not separate charges; they are part of the conspiracy count. You may not find the defendant guilty unless and until you are convinced that at least one of the overt acts as charged in the indictment was committed by at least one of the conspirators. The conspiracy is complete when the unlawful agreement is made and any overt act is done by a conspirator in order to effect the object of the conspiracy.

An overt act is defined as any act knowingly committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act may not be a criminal act or an act which in and of itself constitutes any object of the conspiracy. It may be as innocent as the act of a man driving an automobile or using the telephone. It must, however, be an act that follows and tends toward the accomplishment of the plan or scheme and must

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be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

The overt acts set forth in the indictment are as follows:

In pursuance of said conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere.

(1) In or about November 1968 defendant Jorge Dabed-Sumar sold approximately one kilogram of cocaine in Arica, Chile.

(2) In or about December 1968, defendant Jorge Dabed-Sumar sold two kilograms of cocaine in Arica, Chile.

(3) In or about December 1968, defendant Jorge Dabed-Sumar sold two kilograms of cocaine to co-conspirator Adolfo Sobocki-Tobias, Peru.

(4) In or about November 1970, the defendant Jorge Dabed-Sumar sold approximately two kilograms of cocaine to co-conspirator Adolfo Sobocki-Tobias.

(5) In or about November 1970 co-conspirators Boris Rodriguez and Carlos Struch received delivery of approximately 150 kilograms of cocaine which they smuggled into the United States in a Chevrolet Apache truck.

(6) In or about August 1971, co-conspirator Boris Rodriguez delivered approximately \$100,000 to co-conspirator Adolfo Sobocki-Tobias in the garage of the Hotel Taft, Seventh Avenue and 50th Street, New York, New York, as partial payment for 150 kilograms of cocaine.

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(7) In or about July 1971, defendant Jorge Daber-Sumar sold approximately eight kilograms of cocaine to co-conspirator Juan Carlos Canonico which cocaine was subsequently smuggled into the United States at San Antonio, Texas.

(8) In or about June 1972, fifteen kilograms of cocaine were transported in two suitcases by co-conspirator Andre Puchet and Juan Carlos Mur from San Antonio, Texas to New York, New York and stashed in an apartment at 300 East 81st Street.

(9) In or about November 1971, defendant Jorge Dabed-Sumar sold approximately four kilograms of cocaine to co-conspirator Selin Valenzuela in Santiago, Chile.

(10) In or about November 1971, co-conspirator Selin Valenzuela sold approximately four kilograms of cocaine to co-conspirator John Doe "Ivan", who transported the four kilograms of cocaine to New York.

(11) In or about May 1972, co-conspirator Juan Carlos Canonico transported eight kilograms of cocaine from Miami, Florida to New York, New York.

(12) In or about August 1972, defendant Jorge Dabed-Sumar sold two kilograms of cocaine.

(13) In or about September 1972, defendant Jorge Dabed-Sumar sold approximately twenty kilograms of

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cocaine in Santiago, Chile, which cocaine was smuggled into the United States.

(14) In or about May 1973, defendant Jorge Dabed-Sumar obtained approximately 30 kilos of cocaine sulphate from co-conspirator El Chato Borques and approximately 20 kilos of cocaine base from co-conspirator Miguel Guerra, which Dabed-Sumar sold to conspirators Selin Valenzuela and Wilson MacLean.

Now, as I said before, it is not necessary for the Government to prove that each member of the conspiracy committed or participated in any particular overt act since the act of anyone done in furtherance of the conspiracy becomes the act of all the other members. The Government is not required to prove each of the overt acts as alleged in the indictment.

It must show that at least one was committed in the Southern District of New York, which as I have indicated to you before for our purposes includes Manhattan.

The Government contends that the evidence presented at the trial shows the existence of a single conspiracy to illegally import a Federally-controlled narcotic substance, namely, cocaine, into the United States and the possession and distribution of that narcotic-controlled substance in New York City.

1 rgb-4

2 The defendant has denied he was a member of
3 any such conspiracy and as far as he was concerned no
4 such conspiracy existed.

5 Now, proof of several separate conspiracies
6 is not proof of a single overall conspiracy charged in the
7 indictment unless one of the several conspiracies proved
8 is in fact a single conspiracy which the indictment out-
9 lines.

10 You must determine first whether or not the con-
11 spiracy charged in the indictment existed between
12 two or more conspirators. If you find that no such con-
13 spiracy existed, then you must find the defendant not guilty.

14 Similarly, if you find that several con-
15 spiracies existed, no one of which was a conspiracy charged
16 in the indictment, you must also find the defendant not
17 guilty.

18 However, if you are satisfied beyond a reason-
19 able doubt that the conspiracy charged in the indictment
20 existed, you must determine who were the members of the
21 conspiracy and before you may find the defendant guilty you
22 must find beyond a reasonable doubt that he was a member
23 of a conspiracy charged in the indictment and not some
24 other conspiracy.

25 An agreement to accomplish an unlawful objective

1 rgb-5

2 does not cease to be a single conspiracy because it con-
3 tinues over a period of time or because there was a change
4 in membership. There may be a single, continuing
5 agreement to commit several offenses by a multiplicity
6 of means. A single conspiracy may exist even though
7 the scheme encompasses a variety of purposes and a number
8 of successive stages.

9 In determining whether a given conspiracy
10 exists you may consider what you find the evidence shows
11 as to changes of personnel and activities. You may find
12 a single conspiracy even though there were changes in per-
13 sonnel or activities, provided you find that at least some
14 of the conspirators continued throughout the life of the
15 conspiracy, and the purposes of the conspiracy continued to
16 be those charged in the indictment.

17 The fact that the parties are not always ident-
18 ical does not mean that they are separate conspiracies.
19 In other words, if at all times the alleged conspiracy had
20 the same overall primary purpose and the same nucleus of
21 participants, the conspiracy would be the same basic scheme
22 even though in the course of its operation additional con-
23 spirators joined in and performed additional functions to
24 carry out the scheme while others were not active or had
25 terminated their relationship.

1 rgb-6

2 If you find beyond a reasonable doubt that
3 a conspiracy as charged in the indictment existed between
4 any of the alleged conspirators you must decide then as
5 to the defendant individually whether or not he joined
6 a conspiracy with knowledge of any of its purposes, and
7 in finding whether the defendant is a member of the con-
8 spiracy you apply the standards about which I have in-
9 structed you.

10 That completes the charge with respect to the
11 first count, the conspiracy count.

12 Now, there is a second count which charges the
13 defendant with violating Title 18 United States Code,
14 952(a) and 960(a)(1) which became effective May 1 of 1971.
15 Section 952(a) reads as follows:

16 "It shall be unlawful to import into the United
17 States from any place outside thereof any controlled substance."

18 Section 960(a)(1) provides any person who
19 contrary to Section 952 knowingly or intentionally imports
20 a controlled substance shall be guilty of a crime.

21 The indictment reads as follows:

22 "Count 2. The grand jury further charges:

23 "In or about, in the Souther District of New
24 York, Jorge Dabed-Sumar, the defendant, unlawfully, wilfully,
25 and knowingly did import into the United States from places

1 rgh-7

2 outside of the United States, a Schedule II narcotic drug
3 controlled substance, to wit, approximately eight kilograms
4 of cocaine."

5 Before you could find the defendant guilty of
6 the crime charged in Court 2, you must find beyond a reason-
7 able doubt that the Government has established each of
8 the following elements:

9 First, that in or about April of 1972, Jorge
10 Dabed-Sumar did import into the United States from places
11 outside of the United States a Schedule II narcotic drug,
12 and that he did so knowingly and intentionally, and that
13 the substance imported was in fact a Schedule II narcotic-
14 controlled drug, cocaine.

15 I instruct you as a matter of law that cocaine
16 is a narcotic drug-controlled substance.

17 It is evident that there is no proof here that
18 the defendant did in fact himself actually do the act
19 charged in Count 2 of the indictment. The Government relies,
20 however, on a section of law which is referred to as the
21 aiding and abetting law, which is Title 18, Section 2, and
22 which reads as follows:

23 "Any person who commits an offense against
24 the United States, or who aids or abets or procures in its
25 commission is punishable as a principal."

1 rgb-8

2 Now, that means that not only is the person
3 who commits the illegal act, the person usually called a
4 principal, guilty, but anyone who knowingly aids and abets
5 him in the commission of the act is likewise guilty of
6 committing that illegal act.

7 In short, two or more persons may be involved
8 in the commission of a crime. Their roles may be differ-
9 ent, yet each may be held responsible.

10 To aid and abet another to commit a crime, it
11 must be shown beyond a reasonable doubt that the defendant
12 in some way knowingly associated himself with and furthered
13 the venture intending that it succeed. In other words, if
14 one fully aware of what he is doing plays a significant
15 role in facilitating or furthering a transaction prohibited
16 by law, then that person is equally guilty with the person
17 who directly performed the illegal act, even though the
18 latter played a much greater or major part in the preparation
19 of the crime.

20 So before you may find the defendant, Jorge
21 Dabed-Sumar, guilty on this charge, you must find beyond a
22 reasonable doubt that the cocaine set forth therein at or
23 about that time specified was brought into the United States
24 and that the defendant, Jorge Dabed-Sumar, knowingly aided
25 and abetted in that purpose.

2 To determine whether the defendant aided and
3 abetted the commission of the offense, you will ask your-
4 selves these questions:

5 Did he associate himself with it? Did he
6 participate in it as something he wished to bring about?
7 Did he seek by his action to make it succeed? In short,
8 did he knowingly play a significant role in furthering the
9 importation of the cocaine or facilitate its importation.

10 If he did, then he is an aider and abettor.

11 Now, before concluding my charge, there are
12 some general principles of law that I wish you to take into
13 consideration. Don't concern yourselves with having to
14 remember the words of the indictment. You may have it with
15 you in the jury room while you are deliberating, but as I have
16 indicated to you, it is not evidence of anything and is
17 merely a statement of the accusation in this case.

18 At the beginning of my charge I told you that a
19 defendant was presumed innocent and that the presumption
20 of innocence remains with the defendant unless and until
21 the jury is unanimously satisfied of guilt beyond a reason-
22 able doubt.

23 In describing the elements of the crimes charged
24 I told you that the Government must establish each of
25 those elements by proof beyond a reasonable doubt.

1 rgb-10
2 The question naturally arises, what is a reason-
3 able doubt. The words almost define themselves, that there
4 is a doubt founded in reason and arising out of the evidence
5 or lack of evidence. It is a doubt which a reasonable
6 person has after considering all the evidence.

7 A reasonable doubt is not a vague or speculative
8 or imaginary doubt. It is not caprice, whim or speculation.
9 It is not an excuse to avoid the performance of an unpleasant
10 duty. It is not sympathy for a defendant. A reasonable
11 doubt is a doubt which applies to your reason, your common
12 sense, your experience and your judgment. It is a doubt which
13 would cause a reasonable man or woman like yourselves to
14 hesitate to act in relation to your own important private
15 affairs. Mere suspicion will not justify conviction.
16 Suspicion is not a substitute for evidence nor is it suffic-
17 ient to convict if you find the circumstances merely
18 render an accused probably guilty.

19 On the other hand, it is not required that
20 the Government must prove guilt beyond all possible doubt
21 or to a mathematical certainty, but the proof must be of
22 such convincing character that you would be willing to rely
23 and act on it in the important affairs of your life.

24 In sum, a reasonable doubt exists when, after
25 a fair and impartial consideration of all the evidence

1 rgb-11

2 before you, you can candidly and honestly state that you do
3 not have an abiding conviction that the defendant is guilty
4 of the charge.

5 Now, during the course of this charge I used
6 the words "knowledge" and "intent" as an element of crime.
7 An act or a failure to act is knowingly done if done
8 voluntarily and intentionally and not because of mistake
9 or other innocent reason.

10 Further comment may be of help to you. Knowledge
11 and intent exist in the mind. As we all realize, it is not
12 possible to open up a person's head and see what goes on
13 in his mind. The only way you have for arriving at
14 a decision on these questions is for you to take into con-
15 sideration all the facts and circumstances shown by the
16 evidence and determine from all such facts and circumstances
17 whether the requisite knowledge and intent were present
18 at the time in question.

19 Direct proof is unnecessary, knowledge and
20 intent may be inferred from all the surrounding circumstances.

21 Now, if you should find that the defendant
22 voluntarily and intentionally participated in the making
23 of any deliberate false statement of an exculpatory
24 nature and character, you may consider such false exculpatory
25 statement as circumstantial evidence from which conscious-

1 rgb-12

2 ness of guilt or criminal intent may be inferred. Whether
3 or not such evidence points to a consciousness of guilt and
4 the significance if any to be attached to such evidence
5 are matters solely for your determination under the
6 principles of law that I have given you here.

7 With respect to the credibility of witnesses,
8 which I told you would be one of your most important and
9 principle functions here, you as jurors are the sole judges
10 of the credibility of a witness. You and you alone must
11 determine what weight their testimony deserves. In my
12 instructions to you at the start of the case, I gave you
13 some guidelines that I thought might be helpful.

14 I am going to repeat and expand on those instruc-
15 tions. You should not be influenced by the mere number of
16 witnesses called by either side. The weight of the evidence
17 is not necessarily determined by the number of witnesses
18 testifying on either side. Rather, you should consider all
19 the facts and circumstances in evidence to determine where
20 the truth lies.

21 In assessing credibility you should carefully
22 scrutinize the testimony given, the circumstances under
23 which each witness has testified and every matter in evi-
24 dence which tends to indicate whether the witness is worthy
25 of belief.

The degree of credibility to be given a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in the light of all other testimony and the attendant circumstances in the case and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

How did the witness impress you? Did his version appear straightforward and candid or did he try to hide some of the facts? Is there a motive to testify falsely? In passing upon the credibility of the witness you may take into account inconsistencies or contradictions as to material matters in his own testimony or any conflict with that of another witness.

Also any inconsistencies or admissions in prior testimony or any prior statement of material matters as to which he may have testified upon the trial. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause a jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. An innocent misrecollection, like failure of recollection, is not an uncommon experience.

1 rgb-14

2 A witness may be inaccurate, contradictory or
3 truthful in some respects and yet be entirely credible
4 in the essentials of his testimony. In weighing the
5 effect of a discrepancy consider whether it pertains to
6 a matter of importance or an unimportant detail, and whether
7 the discrepancy results from innocent error or wilful false-
8 hood.

9 If you find that any witnesses testified
10 falsely you can do one of two things. You can either
11 reject all of that witness' testimony on the ground that
12 it is all tainted by falsehood and that none of it is worthy
13 of belief, or you can accept that part which you believe to
14 be credible and reject only that part which you believe to
15 be tainted by falsehood.

16 Should you find that all or any part of a
17 particular witness' testimony was false, you may infer the
18 opposite of that testimony is the truth only if there is
19 other evidence or testimony to that effect. Any testimony
20 rejected by you as false is no longer in the case insofar
21 as any finding that you may make is concerned.

22 I told you earlier that an inference is another
23 word which reason or common sense leads you to draw from
24 the facts which have been proved. Thus, a finding of fact
25 may not be established merely by a negative inference

1 rgb-15

2 rising from your disbelief and rejection of any testimony.

3 In passing upon credibility the ultimate
4 question before you is did the witness tell the truth before
5 you. It is for you to say whether his testimony at this
6 trial is truthful in whole or in part in the light of his
7 demeanor, his explanations and all the evidence in the
8 case.

9 Now, in connection with the question of cred-
10 ibility I want to bring to your attention one of the rules
11 of this Court which relate to the testimony of an accomplice.
12 In the prosecution of a crime the Government is frequently
13 called upon to use witnesses who are accomplices. Often
14 it has no choice nor is there any requirement in the Federal
15 courts that the testimony of an accomplice be corroborated.
16 A conviction may rest upon the uncorroborated testimony
17 of an accomplice if you believe it and find it credible.
18 The fact that a witness is an accomplice may be considered
19 by you, however, as bearing upon his credibility. It does
20 not follow that because a person has acknowledged partici-
21 pation of a crime charged that he is not capable of giving
22 a truthful version of what he testified to you.

23 The testimony of an accomplice, however, should
24 be weighed with great caution and scrutinized carefully.
25 Was the testimony of an accomplice inspired by any motive

1 of reward, of self-interest or hostility to the defendant,
2 so that he gave false or colored testimony against him.
3 If you find that it was, you ought unhesitatingly to reject
4 it. However, if after a cautious and careful examina-
5 tion of a witness' testimony and his demeanor on the stand
6 you are satisfied that he told the truth, there is no reason
7 why you should not accept his testimony as credible.
8

9 You will understand the witnesses and their
10 testimony must be appraised together and as a whole in addi-
11 tion to being analyzed individually and separately.

12 Now, we have had references here to previous
13 trials and testimony on previous trials. You are not to
14 concern yourselves with the fact that previous trials have
15 occurred nor are you to speculate on what may have occurred
16 at any previous trial. The sole purpose of the testimony
17 elicited therein was to show that a witness may have testi-
18 fied differently on that occasion and such fact, if it is
19 a fact, is merely offered on the question of the credibility
20 of the particular witness here.

21 I told you at the outset of this case that the
22 law does not require a defendant in a criminal case to
23 testify or present any evidence on his own behalf. I
24 have also told you that a defendant is not required under our
25 laws to prove his innocence. He is presumed to be innocent

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2 at all times and through the entire trial unless and until
3 the Government proves him guilty beyond a reasonable doubt.

4 For these reasons a defendant need not take the
5 witness stand and testify in his own behalf. The fact
6 that Mr.Dabed-Sumar did not testify at this trial does
7 not create any presumption against him, and I charge you
8 that this fact must not weigh in the slightest against him
9 nor shall this fact enter into your discussions or delibera-
10 tions in any manner.

11 That pretty much concludes my charge to you.
12 It is a lengthy charge, and I tried to go over it without
13 rushing through it, and I hope you have been able to absorb
14 what I have had to say.

15 A few more cautions before you proceed to your
16 deliberations.

17 Excuse me, there is one more item that I should
18 give to you in connection with assessing credibility. You
19 have heard some of the witnesses here have admitted their
20 guilt to crime. Now, in assessing the credibility of the
21 witness you may or may not consider evidence that the witness
22 has in the past been convicted of certain crimes in
23 determining that witness' credibility. While prior con-
24 victions may be a factor affecting credibility, it by no
25 means follows that the witness is necessarily untruthful.

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2 Prior convictions are just one of a number of
3 factors which may be considered when you determine the
4 question of a witness' credibility. Always the ultimate
5 question is did the witness testify truthfully here before
6 you.

7 In your deliberations please do not discuss
8 the question of possible punishment. That is a matter
9 that rests on my conscience and my conscience alone, because
10 the Judge, and the Judge alone is the one who has the
11 obligation of imposing sentence when and if guilt is deter-
12 mined.

13 If you discuss it among yourselves or if you
14 consider it in any way, then you are encroaching upon my
15 function and I ask you not to do it. Your function
16 is to consider the facts and to determine the facts and my
17 function is to pass upon the law and in the event of con-
18 viction, impose sentence.

19 If you find on all the evidence that the evi-
20 dence respecting the defendant leaves a reasonable doubt
21 as to his guilt, you should not hesitate for a moment to
22 return a verdict of not guilty.

23 On the other hand, if you find beyond a reason-
24 able doubt that the law has been violated as charged you
25 should not hesitate because of sympathy or because of any

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2 other reason to render a verdict of guilty.

3 The verdict must represent the considered judg-
4 ment of each juror. In order to return a verdict, it is
5 necessary that each juror agree thereto. Your verdict
6 must be unanimous.

7 It is your duty as jurors to consult with
8 one another and to deliberate with a view to reaching an
9 agreement if you can do so without violence to individual
10 judgment. Each of you must decide the case for yourself,
11 but do so only after an impartial consideration of the
12 evidence with your fellow jurors.

13 In the course of your deliberations do not
14 hesitate to reexamine your own views and change your opinion
15 if convinced it is erroneous. Do not surrender your
16 honest conviction as to the weight or effect of evidence
17 solely because of the opinion of your fellow jurors or for
18 the mere purpose of returning a verdict. You are not
19 partisans; you are judges, judges of the facts. Your
20 sole interest is to ascertain the truth from the evidence
21 in the case.

22 If any reference by the Court or by counsel on
23 the matter of evidence does not coincide with your own
24 recollection, it is your recollection which should control
25 during your deliberations.

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1
2 If it becomes necessary for you during your
3 deliberations to communicate with the Court, you may
4 send a note by the marshal, signed by your foreman or by
5 one or more members of the jury. No member of a jury should
6 ever attempt to communicate with the Court by any means
7 other than a signed writing, and the Court will never com-
8 municate with any member of the jury on any subject touching
9 the merits of the case otherwise than in writing or
10 orally here in open court.

11 You will note from the oath about to be taken
12 by the marshal that he, too, as well as all other persons
13 are forbidden to communicate in any way or any manner
14 with any member of the jury on any subject touching the
15 merits of the case.

16 Bear in mind also that you are never to reveal
17 to any person, not even to the Court, how you stand numer-
18 ically or otherwise on the question of the innocence or guilt
19 of the defendant until you have reached a unanimous verdict.

20 Your verdict, when it is reached, will be
21 announced as follows: "We, the jury, unanimously find the
22 defendant on Count 1," -- and whatever it is -- and "We,
23 the jury, unanimously find the defendant on Count 2" --
24 whatever your verdict is.

25 You are entitled, and as I have said, you will

1 have the indictment available for you and you may call
2 for whatever exhibits or all of the exhibits that you
3 wish.
4

5 It is necessary for me to give counsel the
6 opportunity to determine whether they have any exceptions
7 to my charge and whether they have any requests and if you
8 gentlemen would step up here.

9 (At the side bar.)

10 THE COURT: Mr. Corbett, any exceptions?

11 MR. CORBETT: On behalf of the defendant, no
12 exceptions.

13 MR. LITTLEFIELD: No exceptions.

14 THE COURT: No requests?

15 MR. CORBETT: No requests.

16 MR. LITTLEFIELD: No requests.

17 (In open court.)

18 THE COURT: All right, the law as I have charged
19 it to you is the way it is. We have got good news and bad
20 news, I guess is the way they say it today. We have good
21 news that everybody on the jury is still, in fact everybody
22 here is still healthy, and we have bad news in that we are
23 going to have to excuse the two alternate jurors without
24 having been able to participate in this case.

25 (Alternate jurors excused.)

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2 (One marshal was duly sworn.)

3 THE COURT: I don't know whether your lunch
4 is here, but I suppose it should be here by now and I sug-
5 gest if your lunch is here that you enjoy it. We also
6 have to eat, so enjoy your lunch and how you conduct your
7 deliberations, is entirely up to you.

8 It is customary, but it is not required, and
9 I get this question from jurors from time to time when I
10 dn't mention it, most frequently the juror occupying the
11 Number 1 seat acts as the foreman, but that is not automatic.
12 YOU have a right to select by vote or otherwise your fore-
13 man, whoever is to be speaker for you, but how you conduct
14 your deliberations, as I say, is entirely up to you.

15 All right, you may retire.

16 (The jury adjourned to the jury room at 1:23
17 P.M. to deliberate upon their verdict.)

18 THE COURT: Have you got a clean copy of the
19 indictment and have you got all your exhibits togehter,
20 gentlemen?

21 MR. CORBETT: Yes, sir.

22 MR. LITTLEFIELD: Yes, sir.

23 THE COURT: Is it all right if the jury calls
24 for the exhibits and the indictment, for us to pass them
25 to the jury without any further ado?

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2 MR. LITTLEFIELD: I think Mr. Matarese already
3 handed the indictment.

4 THE COURT: What about the exhibits?

5 MR. CORBETT: I have the defendant's exhibits
6 here.

7 THE COURT: Why don't you go through them now
8 and make sure, and do we have your assurance that as you
9 give them to Mr. Matarese, if the jury calls for them, we
10 may send them in without any further --

11 MR. CORBETT: Yes, we state for the record
12 that if the jury calls for them they may be sent in without
13 anything further.

14 THE COURT: Make sure they are the ones in
15 evidence. I don't want to see the jury get exhibits
16 which aren't in evidence after.

17 All right, we will eat lunch first.

18 (Luncheon recess.)

19 -----

20
21
22 *Copy received*
23 *Paul J. Curran*
24 *Sept 16, 1975*
25